

TOWN OF CUSHING  
PLANNING BOARD  
Minutes of Meeting  
October 5, 2005  
***Approved 11/2/05***

**Board Present:** Chairman Mike Roberts, Bob Ellis, Evelyn Kalloch, Arthur Kiskila, Dan Remian, CEO Scott Bickford and Secretary Deborah Sealey

**Board Absent:** None

**Call to Order:** The Chairman called the meeting to order at 7:00 pm.

**1. Minutes of Previous Meeting:**

**ACTION:** Mr. Ellis made a motion, seconded by Mrs. Kalloch, to accept the minutes of the 9/7/05 meeting as presented.  
Carried 4-0-1 (Mr. Remian abstained)

**2. Application Deadlines:** CEO Bickford apologized for allowing late submittals, which the Board had requested he not. He said he would try not to do it again. Mr. Ellis stated that one application had been submitted past the deadline and the Palm application should not have been combined with Mr. Tower's. Mr. Ellis said the PB had earlier declared that all submittals would be required fifteen (15) days before each meeting. He noted that both the Zizza and Cyrus Holmes applications had recently been refused because they were late and stressed that all applicants must be treated equally. He said the CEO had been asked to assure the completeness of an application before it went on the agenda. Mr. Roberts added that not having the information prior to the meeting was difficult for the PB members. Mr. Ellis concurred, saying that Mr. Tower's had submitted his application on 9/21, though some items were added even later. And, he said, the Moose Run application had only been submitted tonight. Mr. Remian complained that his package had been incomplete late last week. Mrs. Kalloch said it was necessary to stick to the rules in order to be fair and Mr. Kiskila agreed. Mr. Remian asked if there were a written procedure to give to applicants and learned there was not.

Tara Lynde spoke from the audience to say she was unsure what was needed for her application, even after the pre-application meeting last month. There was a brief discussion of the requirements and timing for applications. Mrs. Kalloch suggested specifying what was needed for a complete package. Robert Lynde said his application was complete. Mr. Roberts asked CEO Bickford about his communications with the Lyndes. Mr. Bickford said the applications should be submitted 15 days prior to the meeting, though a simple omission or correction could be accepted a little late. He said the Lyndes' drainage plan had been received today and the soil test submitted earlier was mistakenly not disseminated to the members. Mrs. Kalloch asked for his covenants and Mr. Lynde said there were none.

Mr. Roberts thought the PB had agreed to limit the number of items on the agenda to three (3). If that were so, he said, the Board should stick to that limit. Mrs. Kalloch noted that one of the five items tonight was a pre-application. Mr. Bickford said he agreed with the Chairman, but thought limiting the number of agenda items, especially if they were quick, would result in an eventual backlog. Mr. Roberts agreed that some applications took longer than others and noted that he would not want three subdivisions on one agenda.

Mr. Roberts asked Mr. Tower for his opinion. Mr. Tower said he had faxed his application to the Town Office on the required date, though he had stipulated that he would submit a drawing later. When he dropped that drawing off on Friday, Mr. Tower said, he encountered the Palms, who had bought Lot 4 in Meduncook Plantation and were unaware they needed a building permit because they were within the Shoreland Zone. Since the Palms' was one of the septic systems that needed to be relocated, as requested in Mr. Tower's amendment, Mr. Bickford had thought they could be handled together. Mrs. Kalloch said she had told the Palms they had missed the deadline.

Mr. Ellis said the Board needed to find a way to inform applicants of the regulations. Mr. Bickford asked if applications could be corrected after the 15-day deadline. Mr. Roberts replied that the CEO would have to use common sense to decide if it was a major or minor change. Mr. Tower suggested a seven or eight day window in which the CEO could get back to applicants to make corrections.

**3. Robert Paul Scott and Stephanie Chamberlain, application for building permit in Shoreland Zone, Map 7, Lot 8, Crows Nest Lane, Davis Cove:** Mr. Ellis noted that the plan did not designate the distance from the high water mark to the septic system, which was required to exceed 100'. Mr. Scott said it was well over that distance and Mr. Bickford confirmed this, saying it met the setbacks. Mr. Scott said he would call the CEO when the septic was in place so he could inspect it.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, to accept the application with the condition that it be checked by the CEO.  
Carried 5-0-0

**4. Jim and Jane Burke, application for pier permit at 7 Narrows Lane, Map 2, Lot 51, submitted by Art Tibbetts Marine:** Matt Tibbetts appeared in support of the application. He said he had applied for but not received the necessary DEP permits. Mrs. Kalloch asked if the Resource Protection Zone had been considered. The CEO asked if the RPZ could be traversed by an access and Mr. Tibbetts thought it could.

Mr. Roberts read aloud the criteria form Subsection 15C of the Shoreland Zoning Ordinance. Mrs. Kalloch noted there were extensive stairs to the pier. Mr. Remian said there would be no soil disturbance because they were replacing existing stairs in the same location.

**ACTION:** Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on Subsection 15C(1).  
Carried 5-0-0

**ACTION:** Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on Subsection 15C(2).  
Carried 5-0-0

**ACTION:** Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on Subsection 15C(3).  
Carried 5-0-0

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Remian, for a positive finding of fact on Subsection 15C(4).  
Carried 5-0-0

It was determined that criteria 15C(5), (6) and (7) were not applicable.

**ACTION:** Mr. Remian made a motion, seconded by Mr. Roberts, to approve the application.  
Carried 5-0-0

**5.Dwayne and Dale Prior, pre-application for subdivision off Cushing Road (Route 97), Map 1, Lot 103:** The Prior brothers appeared before the PB. They said they had acquired 19 acres from their father, three-quarters of a mile from the entrance to the Super Max. They had hired a surveyor to lay out the lots, provide wetland delineation and a drainage plan. They had sold one lot and drafted covenants for road maintenance. The Priors showed their site plan to the Board and discussed it out of the hearing of the secretary.

**6.Cushing Holdings LLC / Last Resort Holdings LLC, application for amendments to Meduncook Plantation subdivision, Map 6, presented by James Tower:** Mr. Tower said his proposed amendment included the redesign and relocation of the septic systems on Lots 4, 17 and 18 and relocation of the shellfish harvesters' parking lot. He said he would provide access by foot to the shellfish harvesting area in Hornbarn Cove; written permission would be required, as would removal of everything carried in. Mr. Tower said the parking lot had been relocated at the request of David Faulkingham and was now 150' away on the other side of the road. He noted that he would be providing a corrected Mylar after the surveyor relocated some associated pins.

Mr. Tower stated that Lots 17 & 18 had been approved to share a septic system. The lots had since been sold and it had been determined that the soils were adequate to support separate systems; the septic for Lot 18 would be located on Lot 17. Mr. Bickford advised Mr. Tower that the Lot 17 deed would have to include an easement allowing the Lot 18 septic system placement. On Lot 4, purchased by the Palms, the septic had been moved to accommodate their house design. Mr. Roberts confirmed that TP4-1 was the new test pit. CEO Bickford asked if the abutter to Lot 4 had agreed to this change in case it restricted his well location. Mr. Tower confirmed that he should have written abutter statements, but the abutting lots had not been sold. Mr. Tower concluded by saying he would bring the Mylars in for signing in a couple of weeks. The PB discussed the review criteria under Article VII of the Cushing Subdivision Regulations:

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Remian, for a positive finding of fact on 7.1 (pollution).  
Carried 5-0-0

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Remian, for a positive finding of fact on 7.4 (erosion).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on 7.9 (conformity).  
Carried 5-0-0

The Board determined that the other review criteria and the Article VIII general requirements were not applicable. Mr. Tower agreed to amend his plan to depict the Shoreland Zone.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, to accept the changes as presented, with the approval of the CEO when the amended plans were received.  
Carried 5-0-0

Chairman Roberts told Mr. Tower that the Board was working with Mid-Coast Regional Planning to get updated maps of the Resource Protection Zone, wetlands and contour lines. These would be produced on Mylar to lay over the Cushing tax maps so the areas could be identified by map

and lot; this would be much clearer than the current Town Office map. Mr. Ellis said there had been discussion of an overlay of soil types and the PB should decide exactly what maps it wanted. CEO Bickford said the town could hire an outside source to look at any questions or problems that arose due to the new maps. Mr. Roberts suggested the town could request that a developer have a neutral party identify the soils.

**7. Robert Lynde, application for five-lot subdivision, portion of Map 4, Lot 3, Pleasant**

**Point Road:** Mr. Lynde stated that the front land, existing house and pond would remain unchanged; an additional fire pond would be dug on Lot 3. He said everything had been surveyed and pinned. He noted there would be underground power and a deeded ROW. Mr. Remian said the ponds should be labeled as “fire ponds” rather than “drainage”. He also asked that the underground utilities be shown on the site plan. Mr. Lynde said the only deed restrictions, shown in the notes, were that the five-acre lots could not be subdivided and that an association would maintain the road. There was discussion of the covenants being in the deeds. Mr. Ellis said the fire ponds should be on common land but Mr. Lynde said this was not possible. Mr. Ellis said that an easement would then be required for fire pond access. Mr. Kiskila added that, for maintenance purposes, the ponds should be owned by the association. He also suggested that Mr. Lynde look at the Far Meadows Lane subdivision for covenant language. Mr. Lynde said his attorney had said the covenants could be on a separate piece of paper but Mr. Ellis said the PB required it to be on the plan. Mr. Ellis also pointed out that the subdivision perimeter should be a bold line. Mr. Roberts said there should be a statement with Lots 1-4 that there was no conveyance of ROW to the water, as Mr. Lynde had said the ROW would stay with Lots 1 & 5 only. The CEO noted that the legend mentioned utility poles and said they should be shown to clarify where the underground utilities began.

The PB reviewed the elements. The name of the applicant had been changed to Tara Lynde and the entire road was called Moose Run Road. Mr. Roberts said Parcel A should be outlined in bold. He said there was no need to hold a Public Hearing on the application. Chairman Roberts said, if approved, the Board could not sign the plans until they were corrected; the CEO could review the changes and contact the members to sign. The PB discussed the review criteria under Article VII of the Cushing Subdivision Regulations:

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Roberts, for a positive finding of fact on 7.1 (pollution).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on 7.2 (sufficient water).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Ellis, for a positive finding of fact on 7.4 (erosion).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Ellis, for a positive finding of fact on 7.5 (traffic).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on 7.6 (sewage disposal).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Ellis, for a positive finding of fact on 7.8 (aesthetics).  
Carried 5-0-0

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Remian, for a positive finding of fact on 7.9 (conformity).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Ellis, for a positive finding of fact on 7.10 (financial capacity).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on 7.12 (groundwater).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on 7.14 (wetlands).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on 7.15 (water).  
Carried 5-0-0

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.16 (storm water).  
Carried 5-0-0

The PB discussed the review criteria under Article VII of the Cushing Subdivision Regulations:

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 8.2 (suitable land).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on 8.3 (burden of proof).  
Carried 5-0-0 (**Later rescinded**)

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on 8.4 (improvements).  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 8.5 (markers).  
Carried 5-0-0

The Board determined that the review criteria and the general requirements not voted on were not applicable. The PB asked the applicant to provide a contour line 100' from the brook, with identification in the legend.

Mr. Tower asked permission to make a point. He said that he was not opposed to the subdivision, but that under general requirement 8.3 Mr. Lynde's subdivision would require approval under the Maine state storm water law. He said the threshold for this approval was one

acre of impervious caused by the subdivision or five acres of cleared vegetation; the road was 16' wide, thus more than an acre. Mr. Tower said this required meeting the criteria of the law and filing an application. CEO Bickford said he thought this would fall under a Notice of Intent with the DEP as storm water management kicked in at twenty lots or twenty acres. Mr. Tower disagreed and repeated his definition of the threshold. Chairman Roberts said this would have to be clarified by the town attorney and the CEO said he could clarify it with MMA the next day. Tara Lynde asked Mr. Tower why he brought this up after the vote and Mr. Tower explained.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Ellis, to withdraw the motion, second and approval of Section 8.3.  
Carried 5-0-0

Mr. Ellis said he thought the Board should discuss this at the next meeting after obtaining a legal opinion.

**ACTION:** Mr. Remian made a motion, seconded by Mrs. Kalloch, to table the application until next month's meeting and until the Board had the opinion of its attorney or MMA.  
Carried 5-0-0

**8. Richard and Julie Palm, application for building permit within Shoreland Zone, Meduncook Plantation subdivision, Map 6, Lot 4:** Mr. Ellis suggested the PB review the applicable standards but Chairman Roberts said that had been done when the PB approved the subdivision. Mr. Palm stated that his house would be 120' from the high water mark.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, to approve the building/land use permit.  
Carried 5-0-0

**9. Vote on items from 8/2/05 meeting:**

**ACTION:** Mr. Roberts made a motion, seconded by Mrs. Kalloch, to approve Peter and Susan McBean's application for an addition to their home.  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, to accept Phil and Debra McKean's pier plan.  
Carried 5-0-0

**ACTION:** Mr. Roberts made a motion, seconded by Mrs. Kalloch, to approve the Bonilla pier.  
Carried 5-0-0

**10. Adjournment:** Mr. Remian made a motion, seconded by Mr. Roberts, to adjourn the meeting at 10:00 pm.  
Carried 5-0-0.

Respectfully submitted,

Deborah E. Sealey